



October 22, 2015

Senator Mitch McConnell
317 Russell Senate Office Building
Washington, DC 20510

Re: S. 799, “Protecting Our Infants Act of 2015”

Dear Senator McConnell:

I am writing on behalf of National Advocates for Pregnant Women to express our concerns about S.799, the “[Protecting Our Infants Act of 2015](#).” While we commend the good intentions behind the bill, we believe that it will in fact reinforce gender stereotypes and stigmatize drug use. Further, we anticipate that it will lead to punitive civil and criminal actions against pregnant women who use or are suspected of using drugs, with poor women and women of color being the most likely targets.

[National Advocates for Pregnant Women](#) works to ensure the rights, health, and dignity of pregnant women. We are national experts on punitive state responses to drug use and pregnancy. We partner with world-renowned medical experts and dozens of civil rights and civil liberties non-governmental organizations to shape state and federal law and policy on drug use and pregnancy. We work to dispel the misinformation and stigma surrounding drug use and pregnancy – including myths about neonatal abstinence syndrome (NAS) - and promulgate evidence-based responses that respect the human and civil rights of pregnant women and the integrity of families.

First, we are concerned that this bill’s statements on opioid use and pregnancy distort the issue and reinforce gender stereotypes. For example, the bill states that “[p]reventing opioid abuse among pregnant women and women of childbearing age is crucial,” and “addressing NAS *effectively requires a focus on women* of childbearing age, pregnant women and infants from preconception through early childhood.” These statements unfairly and inaccurately scapegoat women for the increasing rates of NAS when in fact other and more culpable actors—such as [pharmaceutical companies, over-prescribing medical professionals, and states that fail to expand Medicaid](#) to improve access to drug treatment—may be the more appropriate focus of any NAS concerned legislation. Additionally, the bill’s broad “focus” on women “of childbearing age” and “infants from preconception” reorients healthcare service providers so that they will no longer attend to a female patient as a person with a full set of needs, but rather as a potential pregnancy with discreet needs. Such gender insensitive characterizations of drug use and pregnancy drive invidious discrimination against women and girls.

Second, the bill uses language that stigmatizes and mischaracterizes both drug use and the causes of NAS. The bill alternates between referring to women's non-medically prescribed opioid use as "substance use disorder" and "opioid abuse." The former terminology correctly emphasizes the medical and physiological aspects of opioid use, whereas the latter incorrectly evokes morally or legally culpable behavior. We encourage the consistent use of medically appropriate and non-stigmatizing language in any legislation addressing NAS. Moreover, while the bill recognizes that NAS can result from both substance use disorders and the medically prescribed use of opioids during pregnancy, the text of the bill almost exclusively links NAS with opioid "abuse." This is misleading, as a [significant percent of NAS cases](#) result from the use of medically prescribed methadone/suboxone to treat substance use disorders—in fact, this is the recommended standard of treatment for pregnant women, even when it may result in the transitory and treatable symptoms of NAS in a newborn.

Lastly, we are also deeply concerned that the enactment of this legislation will in fact lead to the punitive responses it explicitly discourages. Our two decades of [research](#) and experience demonstrate that laws and policies that increase the surveillance and tracking of pregnant women inevitably lead to civil and criminal interventions that are medically unsupported and violate the human and civil rights of women and families.

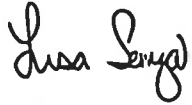
For example, in 2012, the Tennessee Department of Health (DOH) implemented a statewide NAS monitoring system to develop non-punitive, health centered policies and practices to prevent and address NAS. This seemingly benign data collection system elicited a [disastrous legislative response](#): the enactment of a law that criminalizes drug use during pregnancy. The law explicitly permits the arrest of women for giving birth to a child who is "addicted" or "harmed." In practice, women whose substance use was prescribed, women whose newborns had not been diagnosed with NAS or "harm," and women *who had used no drugs at all* have been arrested and charged with crimes. This law did not make additional funding available to provide treatment to pregnant women in Tennessee and has not improved the health and welfare of mothers and children. To the contrary, in response to the law [women have fled the state, avoided seeking prenatal care](#), and considered terminating wanted pregnancies for fear of arrest and prosecution.

This experience demonstrates that well-intended efforts at data collection can have unintended and devastating consequences. When the Tennessee DOH implemented its NAS monitoring system, it explicitly rejected punitive responses to substance use during pregnancy. Nonetheless, once the data was collected, the Tennessee legislature used the data to justify criminalizing substance use during pregnancy.

If S.799 becomes law, we hope that its call for research into the causes of and treatments for NAS and its provision for non-governmental organization input will be informed by principles of [Harm Reduction](#). We urge the involvement of the foremost medical researchers exploring compassionate, non-invasive care for substance using pregnant women and infants experiencing NAS, including [Dr. Ron Abrahams](#), [Dr. Mishka Terplan](#), [Dr. Mary Faith Marshall](#), [Dr. Hendree Jones](#), and [Dr. Robert Roose](#). In addition, we hope that the departments charged with overseeing the implementation of the bill's provisions will heed the call of [every leading medical organization](#) and unequivocally denounce punitive responses to substance use during pregnancy.

Thank you for your concern for pregnant women and families. We hope that you will act in their interest and promote policies that increase access to evidence-based, responsive health care for both pregnant women and their newborns, and address the root causes of increased opioid dependence in the United States.

Sincerely,

A handwritten signature in black ink that reads "Lisa Sangoi". The signature is written in a cursive style with a large initial "L" and "S".

Lisa Sangoi, Ford Foundation Public Interest Law Fellow
Sara Ainsworth, Director of Legal Advocacy
National Advocates for Pregnant Women